

FINANCIAL INSTITUTIONS COMMITTEE MEETING
Business Law Section, State Bar of California

Meeting of April 11, 2006

Committee Members Present: John Hancock, Chair; Meg Troughton, Vice Chair; Rosie Oda, Secretary; Michael Abraham; Bruce Belton; Laura Dorman; Andrew Druch; Bart Dzivi; Jim Dyer; Randy Kennon; Teryl Murabayashi; Todd Okun; Russ Schrader; Keith Ungles; and Richard Zahm.

Committee Members Absent: Leland Chan; Mark Gillett; Jay Gould; Rob Hale; Ken Krown; Linda Iannone; Ken Krown; Rosemary Lemmis; Allan Ono; Brad Seiling; and Bob Stumpf

Advisory Members and Others Present: Clay Coon; Bob Mulford; Michael Occhiolini; Isabelle Ord; Jim Rockett; and Neil Rubenstein.

Call to Order: Our Chair John Hancock of World Savings called the meeting to order at 9:35 A.M.

Welcome to Members and Advisory Members: John welcomed the Committee Members and the Advisory Members and asked each person to identify themselves.

1. Approval of March 14, 2006 Minutes: The Committee approved the minutes of the March 14, 2006 meeting.

2. FIC Applications: John announced it was application time, and that he will be checking attendance to see how many members have not been attending regularly and, thus, how many slots need to be filled. He urged all of us to call him with recommendations.

3. Annual Meeting of the Bar on October 5th – 8th: We discussed whether to have our regularly scheduled meeting in October or to conduct it in Monterey. The Committee voted to have the meeting here as usual. Four of our Committee members will be putting on a Hot Topics seminar at the annual meeting: Joe Catalano of UBOC, Isabelle Ord of Sheppard Mullin, Laura Dorman of Citigroup, and Rosie Oda of Pillsbury.

4. Grafton Draft Legislation: Neil Rubenstein of Buchalter reported on the latest developments on this legislation. Plaintiffs lawyers have emerged full force in opposition to any legislative response to the *Grafton* decision. Their vigorous opposition to the proposal of the Civil Justice Association of California (“CJAC”), a business lobbying group that is trying to accomplish tort reform, resulted in a counter proposal affecting state arbitration law (despite the Federal Arbitration Act), which in turn resulted in a stalemate. Ultimately, Larry Doyle of the State Bar advised the Corporations Committee not to present the proposal to the Board of Governors in March because of the controversy. Additionally, the staff of the Assembly Judiciary Committee indicated that

if the plaintiffs bar could not come to a consensus with proponents of the bill, they were not going to do anything. Neil pointed out that, somewhat ironically, the lack of jury waivers in the area of commercial litigation will simply result in more cases going to arbitration or judicial reference, which will not help the plaintiffs bar. Neil advised our Committee to send a letter to the Corporations Committee in support of the proposal and wait for things to settle down before doing more. Our Chair called for a motion, and the Committee voted to authorize Neil to draft such a letter.

5. ANPR on FACT Act Guidelines: Our Chair John Hancock reported that the federal banking agencies and the Federal Trade Commission (“FTC”) have issued an advance notice of proposed rulemaking (“ANPR”) on the Fair and Accurate Credit Transactions Act (“FACT Act”), 71 Fed. Reg. 14419 (Mar. 22, 2006). The ANPR addresses how lenders are to report information to credit bureaus. There is concern that subprime lenders may only be reporting bad news. However, these rules present a possibility for significant change as well as significant systems investment, so John urged us to review the proposal and provide comments to the agencies.

6. Agency Study: John also alerted us to a new study commissioned by the federal banking agencies entitled “Evolution of a Prototype Financial Privacy Notice”. This study, released on February 28, 2006, responds to complaints that privacy notices required by the Gramm-Leach-Bliley Act (“GLBA”) were too difficult for consumers to understand. John pointed out that there are significant errors in the study which could result in unusable forms or a “layering effect” where in some cases more than one form might be required. John pointed out an FTC case involving Trans Union, a credit bureau, which covered “credit headers”, which contain name, address, telephone and social security information. The case treated credit headers as amounting to “credit information” under the Fair Credit Reporting Act. John pointed out that the prototype study incorrectly suggests that all information is subject to opt out, which is not the case because a bank could still give its securities affiliate credit header information under GLBA .

7. State Legislative Report: Bob Mulford briefly summarized his detailed report of pending state legislation, which includes CBA’s positions, pointing out that AB 2711 was no longer a spot bill. He responded to a question about possible new elder abuse legislation that we had previously discussed in Committee as not pending. He noted that AB 1898, a bill increasing mandatory flood insurance levels, was being opposed by CBA.

8. Federal Legislative Report: Bart Dzivi reported that this was a slow quarter, and that nothing had been marked up by Senate Banking. A favorite topic in Washington has been foreign investment in ports with 13 bills on port security and another 23 bills on port investment. Another topic buoyed by recent events has been flood insurance reform and modernization as HR 4973 passed the House last week as legislators seek ways to come up with funds to service the debt incurred for Katrina restoration. Premiums will be increased for non-residential and non-primary residential flood insurance, and coverage will be increased from \$250 to 335M for residential flood insurance and from \$500 – 670M for commercial flood insurance. Penalties will be increased for nonconformance

with the flood insurance law. John warned us that bank examiners have also increased their monitoring of compliance with flood insurance requirements.

9. Miscellaneous: Andy Druch let us know that Rabobank is seeking a General Counsel for its Roseville, Sacramento office to report to him in New York. The position will focus on the retail, compliance side. Rabobank has 800 employees in California.

John reminded us to send Andy some sentences on topics of interest to be sent out to our constituency list.

Jim Rockett of Bingham reminded us to comment on the proposed interagency guidance on Concentrations in Commercial Real Estate Lending.

10. Adjournment: The meeting was adjourned at 10:30 a.m.